

CIVIL CASE MANAGEMENT PLAN

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

Gary Bradshaw

No. 15-CV-654 FJS/TWD

VS

**Prudential Insurance
Company**

All topics are covered on page 1A,
with no disagreement among the parties.
Michael Daly August 18, 2015

IT IS HEREBY ORDERED that, Pursuant to Rule 16(b), Federal Rules of Civil Procedure, a status and scheduling conference will be held in this case before the Honorable THÉRÈSE WILEY DANCKS, United States Magistrate Judge on **August 25, 2015, at 10:30 AM**. All conferences are conducted by telephone. Plaintiff's attorney will initiate the call using AT&T or other teleconferencing service and call Judge Dancks' chambers at 315-234-8618, a dedicated conference line which is not to be used for other purposes. Pro-se plaintiffs will provide the court with a telephone number for use in placing the conference call.

Counsel for all parties or individuals appearing pro se in the above-captioned action are directed to confer in accordance with Fed. R. Civ. P. 26(f) with respect to all of the agenda items listed below, no later than **twenty-one (21) days** before the scheduled Rule 16 Conference. Following that Rule 26(f) meeting, a report of the results of the conference, in the format set forth below, must be filed with the clerk no later than **seven (7) days** prior to the scheduled Rule 16 conference with the Court. Matters which the Court will discuss at the status conference will include the following: (insert a separate subparagraph as necessary if parties disagree):

- 1) JOINDER OF PARTIES:** Any application to join any person as a party to this action shall be made on or before the _____ day of _____.
- 2) AMENDMENT OF PLEADINGS:** Any application to amend the pleadings to this action shall be made on or before the _____ day of _____.
- 3) DISCOVERY:** All discovery in this action shall be completed on or before the _____ day of _____, _____. **(Discovery time table is to be based on the complexity of the action)**
- 4) MOTIONS:** All motions, including discovery motions, shall be made on or before the _____ day of _____, _____. **(Non-Dispositive motions including discovery motions may only be brought after the parties have complied with Section IX of General Order #25)**

**RE: Bradshaw v. Prudential Insurance Company of America et al.
5:15-cv-654 (FJS/TWD)**

**Civil Case Management Plan
page 1A**

1. This is a claim, pursuant to the Employee Retirement Income Security Act (ERISA), that the Defendants wrongfully suspended the Plaintiff's short-term disability benefits and denied him further short-term and long-term disability benefits. The Plaintiff has claimed that the Defendants' determination was arbitrary and capricious, and the parties agree that that standard applies in this action.
2. The parties conferred by telephone on August 4, 2015, and intend to discuss possible settlement.
3. It is anticipated that the Defendant Prudential will file the record on which the Defendants' decision was made, and that the issue will then be decided by summary judgment.
4. The Defendant Prudential should file the record by October 15, 2015.
5. If there is no controversy concerning the contents of the record, the parties anticipate moving for summary judgment by December 15, 2015.
6. Management Plan items 1 through 6: The parties do not anticipate joinder of additional parties, amendment of pleadings, discovery, motions other than summary judgment motions, or a trial. No jury demand has been filed.
7. Management Plan item 7: The parties agree that the court has subject matter jurisdiction.
8. Management Plan items 8 through 13: See above.
9. Management Plan item 14: No related case is pending before this court.
10. Management Plan item 15: This is not a class action.
11. Management Plan item 16: Settlement prospects cannot be evaluated at this time.
12. Management Plan item 17: This is not a Qualifying Mandatory Mediation Case.
13. Pursuant to Fed. R. Civ. P. 26(f), a telephone meeting took place on August 4, 2015, attended by Attorney Michael Daly for the Plaintiff and Attorney Robert Szyba for the two Defendants.

Date: _____

Michael P. Daly, for the Plaintiff

Date: _____

Robert T. Szyba, for the Defendants

5) PROPOSED DATE FOR THE COMMENCEMENT OF TRIAL: The action will be ready to proceed to trial on or before the _____ day of _____, _____. It is anticipated that the trial will take approximately _____ days to complete. The parties request that the trial be held in _____, N.Y. (The proposed date for the commencement of trial must be within 18 months of the filing date).

6) HAVE THE PARTIES FILED A JURY DEMAND: _____(YES) / _____(NO).

7) DOES THE COURT HAVE SUBJECT MATTER JURISDICTION? ARE THE PARTIES SUBJECT TO THE COURT'S JURISDICTION? HAVE ALL PARTIES BEEN SERVED?

8) WHAT ARE THE FACTUAL AND LEGAL BASES FOR PLAINTIFF'S CLAIMS AND DEFENDANT'S DEFENSES (INCLUDE COUNTERCLAIMS & CROSSCLAIMS, IF APPLICABLE)?

9) WHAT FACTUAL AND LEGAL ISSUES ARE GENUINELY IN DISPUTE?

10) CAN THE ISSUES IN LITIGATION BE NARROWED BY AGREEMENT OR BY MOTIONS? ARE THERE DISPOSITIVE OR PARTIALLY DISPOSITIVE ISSUES APPROPRIATE FOR DECISION ON MOTION?

11) WHAT SPECIFIC RELIEF DO THE PARTIES SEEK? WHAT ARE THE DAMAGES SOUGHT?

12) DISCOVERY PLAN:

A. Mandatory Disclosures

The parties will exchange the mandatory disclosures required under Rule 26(a)(1) at least **seven (7) days** prior to the date of the Rule 16 conference, unless they have obtained prior approval from the assigned Magistrate Judge to extend that deadline.

B. Subjects of Disclosure

The parties jointly agree that discovery will be needed to address the following subjects:

C. Discovery Sequence

Describe the parties' understanding regarding the timing of the discovery, and state whether it is anticipated that discovery will be phased to address different issues in stages.

D. Written Discovery

Describe the written discovery demands which the parties contemplate serving under Rules 33, 34 and 36, including when they will be promulgated, the areas to be covered, and whether there is any need for any party to exceed the number of interrogatories permitted under Rule 33.

E. Depositions

Set forth the parties' expectations regarding depositions, including the approximate number to be taken, their location, a general description of the deponents, and an indication of whether any non-party fact depositions are anticipated.

F. Experts

Set forth the parties' expectations regarding the retention of experts, and identify any particular issues to be addressed by the court concerning the retention and exchange of the information regarding experts, including whether the parties seek a variance from the expert disclosure requirements of the form uniform pretrial scheduling order typically issued by the court (i.e., initial expert disclosure at least ninety days, responsive expert disclosures at least forty-five days, and rebuttal reports due at least thirty days, before the close of discovery).

G. Electronic Discovery

Set forth the parties' understanding and expectations regarding discovery of electronically stored information. This description should include any agreements reached with respect to the retention of electronically stored information and the manner in which it will be produced, if requested. The parties should also identify any agreements regarding the manner in which electronically stored information subject to claims of privilege or work product protection will be handled, and whether a court order will be requested, either on stipulation or otherwise, to address this issue. If an agreement has been reached on the entry of such an order, provide a brief description of the provisions which will be included in a proposed order.

HOW CAN SETTLEMENT EFFORTS BE ASSISTED?

(Do not indicate any monetary amounts at this time, settlement will be explored by the Magistrate Judge at the time of the initial status conference)

COMPLETE QUESTION 17 ONLY IF YOUR FILING ORDER COVER SHEET WAS CHECKED AS AN ADR TRACK CASE - Subject to Mandatory Mediation under General Order #47.

17) IF YOUR CASE WAS SELECTED AS A QUALIFYING MANDATORY MEDIATION CASE, CONFIRM THAT YOU HAVE:

- A. Reviewed General Order #47? YES / NO
- B. Reviewed the List of Court Approved Mediators available on the NDNY website? YES / NO
- C. Prepared to discuss with the Court, at the conference, whether your case should be opted out of the program? YES / NO
- D. Discussed the time frame needed to complete Mandatory Mediation? YES / NO

Pursuant to Fed. R. Civ. P. 26(f) a meeting was held on _____ at _____ and was attended by: _____ (Date) _____ (Place)

_____ for plaintiff(s)

_____ for defendant(s) _____

(party name)

_____ for defendant(s) _____

(party name)

At the Rule 16(b) conference, the Court will issue an order directing the future proceedings in this action. The parties are advised that failure to comply with this order may result in the imposition of sanctions pursuant to Federal Rules of Civil Procedure 16(f).

Please detach this case management plan form and file electronically with the clerk no later than seven (7) days in advance of the conference date.